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Lim Guan Eng v Datuk Tan Teik Cheng & Anor

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCvC)(W)-1085–07 OF 2023
SEE MEE CHUN, AZMI ARIFFIN AND AHMAD KAMAL JJCA
25 FEBRUARY 2025

C *Tort — Defamation — Libel — Whether first respondent's article did not defame appellant but merely sought latter's response to an allegation against him — Whether opinion, inferences and comments expressed in impugned statements were made based on true facts — Whether respondents succeeded on defences of fair comment, justification and reportage — Whether second respondent ('R2') owner*
D *of online newspaper was not liable as it had published first respondent's article in full in its 'Letters to the Editor' section in a fair and unbiased manner — Whether R2 had duty to publish the article as it was a matter of public interest particularly during an election campaign period*

E On 7 March 2022, the second respondent ('R2'), which owned an online newspaper, The Star Online, published in its 'Letters to the Editor' section an article written by the first respondent ('R1'), then the vice-president of the Malaysian Chinese Association ('MCA') political party, blaming the appellant for being partly responsible for the collapse of the Pakatan Harapan ('PH')
F government in February 2020 after only 22 months in power. The appellant was Finance Minister in the PH government as he was then the chairman of the DAP (Democratic Action Party) — a major component in the PH ruling coalition and a political rival of MCA. In the article, R1 alleged that apart from earning public censure for cancelling government funding to the
G MCA-initiated Tunku Abdul Rahman University College, the appellant as Finance Minister had also claimed that he had allocated RM4m to the construction of a Chinese primary school in Johor when, in fact, that allocation was made conditional upon the school changing its name. It had been decided prior to PH coming to power, that the school was to be named after a Chinese
H community leader in Johor, Tan Sri Kuek Ho Yao, who had since passed away. With regard to the condition of the school's name-change, R1 had asked in the article: 'When will he (ie the appellant) come out to explain this matter?' Contending that the article had defamed him, the appellant sued the respondents for RM5m in general, aggravated and exemplary damages. The
I respondents relied on the defences of justification, fair comment and reportage. After a full trial, the High Court dismissed the appellant's claim holding that the impugned statements in the article were not defamatory of the appellant, that the respondents had proven their defences and that there was no malice in the publication of the article. In the instant appeal, the appellant

argued that the trial judge was plainly wrong in his findings and conclusions. A

Held, unanimously dismissing the appeal and affirming the High Court's decision:

(1) As rightly found by the trial judge, the impugned statements were not capable of bearing the defamatory meanings ascribed to them by the appellant. An ordinary reasonable reader who read the impugned statements together as a whole with the entire publication would have understood that the impugned statements merely sought clarification from the appellant about the allegation which had arisen in the course of the Johor State Election which the appellant had not denied, rather than to demean the appellant's credibility and reputation (see paras 41 & 49). B C

(2) The court could not see how the impugned statements when read in the context of the publication as a whole were capable of giving the impression that the appellant as Finance Minister had acted in a high-handed, oppressive and arbitrary manner in dealing with the funding for the school and/or that he had used his public office to interfere with and disrupt the administration of the school (see para 42). D

(3) The final sentence in the article took away the sting in the impugned statements. A person who had made an unequivocal allegation would not ask for an explanation. A reasonable man reading that final sentence and noting that the article was placed in the 'Letters to the Editor' section would accept that a reply or explanation would be forthcoming from the appellant in the same section of the newspaper and therefore did not have the tendency to pass any judgment on him yet (see paras 46–47). E F

(4) The impugned statements were based on the truth of several facts. Hence, the defence of fair comment succeeded. The impugned statements were an opinion and inference that a fair-minded person would have honestly made in the circumstances (see paras 54–57 & 65). G

(5) Considering the events that preceded the publication of the article, there was uncertainty amongst members of the public as to whether the name of the Chinese primary school would be changed. The campaign period during the Johor State Election was an opportune time for the issue to be clarified. R2 played its part in making sure that the issue continued to be raised in view of the appellant's and/or DAP's failure to explain the issue directly. Public interest demanded that the press was afforded the freedom to report on such matters. R2 had an honest belief that the opinion that was expressed by R1 on the issue in the impugned statements should be disseminated for public information (see paras 59–64). H I

(6) The issues raised in R1's article were clearly matters of public interest because even before the publication of the article, there was already

extensive media coverage on the matter of the RM4m allocation to the school and about its change of name. The issues concerning the school held huge interest for the Chinese community and the voters in Johor. It was a hot issue in the Johor State Election (see paras 68 & 70).

(7) R2 was clearly entitled to avail of the defence of reportage which, unlike the defence of responsible journalism, was not concerned with the truth and accuracy of the defamatory allegations but with the narrower public interest of making it known that the allegations were in fact made, in particular, the call upon the appellant to explain his non-denial that the RM4m allocation to the school was conditional upon its change of name. R2 had published the impugned statements in full in a fair, disinterested and neutral manner without adopting the same as its own. The article was also published in the 'Letters to the Editor' section, which meant that it was open to the appellant to reply to the article in the same section (see paras 78–80 & 84).

(8) Malice could not be inferred simply because the appellant and R1 were political adversaries. R1's defence of fair comment was not defeated by malice. This was not a case where the impugned statements were made falsely or recklessly or without any belief that they were true. R1 testified that he had made enquiries with a member of the school's building committee before making the impugned statements. The court was satisfied that R1 had an honest belief in the impugned statements (see paras 94 & 96).

[Bahasa Malaysia summary

Pada 7 Mac 2022, responden kedua ('R2'), yang memiliki akhbar dalam talian, The Star Online, menerbitkan dalam bahagian 'Surat kepada Editor' sebuah artikel yang ditulis oleh responden pertama ('R1'), ketika itu naib presiden parti politik Persatuan Cina Malaysia ('MCA') yang menyalahkan perayu kerana bertanggungjawab atas kejatuhan kerajaan Pakatan Harapan ('PH') pada Februari 2020 selepas hanya 22 bulan berkuasa. Perayu adalah Menteri Kewangan dalam kerajaan PH dan beliau ketika itu merupakan pengerusi DAP (Democratic Action Party) — komponen utama dalam gabungan pemerintah PH dan saingan politik MCA. Dalam artikel itu, R1 mendakwa selain mendapat kecaman awam kerana membatalkan pembiayaan kerajaan kepada Kolej Universiti Tunku Abdul Rahman yang ditubuhkan oleh MCA, perayu selaku Menteri Kewangan juga mendakwa bahawa beliau telah memperuntukkan RM4 juta untuk pembinaan sebuah sekolah rendah Cina di Johor sedangkan peruntukan itu dibuat bersyarat kepada sekolah itu menukar namanya. Sebelum PH berkuasa, telah diputuskan bahawa sekolah itu akan dinamakan sempena seorang pemimpin masyarakat Cina di Johor, Tan Sri Kuek Ho Yao yang telah meninggal dunia. Berkenaan dengan keadaan pertukaran nama sekolah, R1 telah bertanya dalam artikel itu: 'Bilakah dia (iaitu perayu) akan menjelaskan perkara ini?'. Dengan alasan bahawa artikel itu

telah memfitnahnya, perayu telah menyaman responden untuk jumlah sebanyak RM5 juta secara umum, ganti rugi teruk dan teladan. Responden bergantung pada pembelaan justifikasi, komen adil dan pelaporan. Selepas perbicaraan penuh, Mahkamah Tinggi menolak tuntutan perayu dengan menyatakan bahawa kenyataan yang dipertikaikan dalam artikel itu tidak memfitnah perayu dan bahawa responden telah membuktikan pembelaan mereka dan bahawa tiada niat jahat dalam penerbitan artikel tersebut. Dalam rayuan ini, perayu berhujah bahawa hakim perbicaraan jelas terkhilaf dalam penemuan dan keputusannya.

Diputuskan, sebulat suara menolak rayuan dan mengekalkan keputusan Mahkamah Tinggi:

(1) Seperti yang diputuskan dengan betul oleh hakim perbicaraan, kenyataan yang dipertikaikan tidak membawa maksud fitnah yang dikaitkan kepada perayu. Pembaca biasa yang munasabah yang membaca kenyataan yang dipertikaikan bersama-sama secara keseluruhan dengan keseluruhan penerbitan akan memahami bahawa kenyataan yang dipertikaikan hanya meminta penjelasan daripada perayu tentang dakwaan yang timbul semasa Pilihan Raya Negeri Johor yang tidak dinafikan oleh perayu dan bukannya untuk merendahkan kredibiliti dan reputasi perayu (lihat perenggan 41 & 49).

(2) Mahkamah tidak dapat melihat bagaimana kenyataan yang dipertikaikan apabila dibaca dalam konteks penerbitan secara keseluruhan mampu memberi gambaran bahawa perayu sebagai Menteri Kewangan telah bertindak dengan cara yang angkuh, menindas dan sewenang-wenangnya ketika menguruskan pembiayaan untuk sekolah dan/atau bahawa dia telah menggunakan jawatan awamnya untuk terlibat dan mengganggu pentadbiran sekolah tersebut (lihat perenggan 42).

(3) Ayat terakhir dalam artikel itu memudarkan kenyataan yang dipertikaikan. Seseorang yang telah membuat tuduhan tidak akan meminta penjelasan. Seseorang yang munasabah membaca ayat terakhir itu dan menyatakan bahawa artikel itu diletakkan di bahagian 'Surat kepada Editor' akan mendapati bahawa jawapan atau penjelasan boleh diperoleh daripada perayu dalam bahagian akhbar tersebut dan oleh itu tidak mempunyai kecenderungan untuk menghakiminya (lihat perenggan 46–47).

(4) Kenyataan yang dipertikaikan adalah berdasarkan kebenaran beberapa fakta. Oleh itu, pembelaan komen yang adil diterima. Kenyataan yang dipertikaikan adalah pendapat dan kesimpulan yang dibuat dengan jujur oleh orang yang berfikiran adil dalam keadaan itu (lihat perenggan 54–57 & 65).

(5) Mengambilkira peristiwa sebelum penerbitan artikel itu, terdapat ketidakpastian di kalangan orang ramai sama ada nama sekolah rendah Cina akan ditukar. Tempoh kempen semasa Pilihan Raya Negeri Johor adalah masa yang sesuai untuk isu ini dijelaskan. R2 memainkan peranannya dalam memastikan bahawa isu itu terus dibangkitkan memandangkan kegagalan perayu dan/atau DAP untuk menjelaskan isu itu secara langsung. Kepentingan awam menuntut agar akhbar diberi kebebasan untuk melaporkan perkara sedemikian. R2 mempunyai kepercayaan yang jujur bahawa pendapat yang dinyatakan oleh R1 mengenai isu itu dalam kenyataan yang dipertikaikan harus disebarkan untuk maklumat awam (lihat perenggan 59–64).

(6) Isu-isu yang dibangkitkan dalam artikel R1 jelas merupakan perkara kepentingan awam kerana sebelum artikel itu diterbitkan, sudah ada liputan media yang meluas mengenai peruntukan RM4 juta kepada sekolah dan mengenai pertukaran namanya. Isu-isu mengenai sekolah itu sangat menarik minat masyarakat Cina dan pengundi di Johor. Ianya merupakan isu hangat dalam Pilihan Raya Negeri Johor (lihat perenggan 68 & 70).

(7) R2 jelas berhak untuk menggunakan pembelaan pelaporan yang tidak seperti pembelaan kewartawanan yang bertanggungjawab, yang mana tidak mementingkan kebenaran dan ketepatan tuduhan fitnah tetapi untuk kepentingan awam untuk memberitahu bahawa tuduhan itu sebenarnya dibuat, khususnya, gesaan kepada perayu untuk menjelaskan bahawa peruntukan RM4 juta kepada sekolah itu dibuat secara bersyarat untuk pertukaran namanya. R2 telah menerbitkan kenyataan yang dipertikaikan sepenuhnya dengan cara yang adil, tidak mempunyai kepentingan dan neutral dan bukan untuk kepentingan sendiri. Artikel itu juga diterbitkan dalam bahagian 'Surat kepada Editor', yang bermaksud bahawa ianya terbuka kepada perayu untuk membalas artikel tersebut dalam bahagian yang sama (lihat perenggan 78–80 & 84).

(8) Niat jahat tidak boleh disimpulkan semata-mata kerana perayu dan R1 adalah musuh politik. Pembelaan R1 terhadap komen yang adil tidak dikalahkan oleh niat jahat. Ini bukanlah kes di mana kenyataan yang dipertikaikan dibuat secara palsu atau melulu atau tanpa sebarang kepercayaan bahawa ia adalah benar. R1 memberi keterangan bahawa dia telah membuat pertanyaan dengan ahli jawatankuasa bangunan sekolah sebelum membuat kenyataan yang dipertikaikan. Mahkamah berpuas hati bahawa R1 mempunyai kepercayaan yang jujur terhadap kenyataan yang dipertikaikan (lihat perenggan 94 & 96).

Cases referred to

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1988] 1 MLRH 653; [1989] 1 CLJ Rep 321, HC (refd)

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371[1998] 2 MLRA 287 [1999] 1 CLJ 461[1999] 1 AMR 753, CA (refd)
Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300; [2019] 1 MLRA 515; [2019] 1 CLJ 329, FC (refd)
Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals [2017] 5 MLJ 413; [2017] 5 MLRA 361; [2017] 5 AMR 629; [2017] 8 CLJ 369, FC (refd)
Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758; [2022] 4 MLRA 718; [2022] 5 CLJ 487, FC (refd)
Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor [2017] 6 MLJ 133; [2017] 6 MLRA 281; [2018] 1 CLJ 145; [2017] 7 AMR 317, FC (refd)
Kian Lup Construction v Hong Kong Bank Malaysia Bhd [2002] 7 MLJ 283; [2002] 2 MLRH 389; [2002] 7 CLJ 32; [2002] 3 AMR 3554, CA (refd)
Lim Guan Eng v Ruslan bin Kassim and another appeal [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] 4 CLJ 155, FC (refd)
London Artists Ltd v Littler Grade Organisation Ltd v Same Associated Television Ltd v Same Grade v Same [1969] 2 QB 375, CA (refd)
Mkini Dotcom Sdn Bhd & Ors v Raub Australian Gold Mining Sdn Bhd [2021] 5 MLJ 79; [2021] 5 MLRA 37; [2021] 7 CLJ 145, FC (refd)
Sllkin v Beaverbrook Newspapers Ltd and another [1958] 1 WLR 743, QBD (refd)
Stocker v Stocker [2019] UKSC 17, SC (refd)

Appeal from: *Lim Guan Eng v Datuk Tan Teik Cheng & Anor* [2023] MLJU 1983 (High Court, Penang)

Simon Murali (with Kok Yuen Lin) (Simon Murali & Co) for the appellant.
Ng Kian Nam (with Hemananthini a/p Chellakannapillai & Cheah Jia Sing) (Ng Kian Nam & Partners) for the first respondent.
Abdullah Abdul Rahman) (with Deanna Ternisha) (Cheng & Ariff) for the second respondent.

Ahmad Kamal JCA:

INTRODUCTION

[1] YB Lim Guan Eng, the plaintiff (appellant) brought an action against the defendants (respondents) in relation to publication of statements which are said to be defamatory against him.

[2] The statements were made by Datuk Tan Teik Cheng (the first respondent) and thereafter published in the online version of a leading English

daily which Star Media Group Bhd (the second respondent) owns ie *The Star Online*.

[3] To succeed in his claim for defamation, the appellant has to prove three elements as follows:

(a) the words are defamatory;

(b) it referred to him; and

(c) it was published, that is, communicated to a third party.

(See: *Mkini Dotcom Sdn Bhd & Ors v Raub Australian Gold Mining Sdn Bhd* [2021] 5 MLJ 79; [2021] 5 MLRA 37; [2021] 7 CLJ 145 ('Mkini Dotcom'); *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1988] 1 MLRH 653; [1989] 1 CLJ Rep 321; *Kian Lup Construction v Hong Kong Bank Malaysia Bhd* [2002] 7 MLJ 283; [2002] 2 MLRH 389; [2002] 7 CLJ 32; [2002] 3 AMR 3554.)

[4] Based on the fact presented before us, we are of the view that the respondents did not dispute that the statements refer to the appellant and that they were published to a third party. Thus, the second and third elements have been proven by the appellant. This leaves the court to decide on the first element ie whether the offending statements were defamatory.

[5] The test of whether the statements were defamatory of the appellant is whether the words published in their natural and ordinary meaning impute to the appellant any dishonourable or discreditable conduct or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory (see: *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371[1998] 2 MLRA 287 [1999] 1 CLJ 461[1999] 1 AMR 753).

BACKGROUND FACTS

[6] The appellant is the Chairman of the Democratic Action Party ('DAP'). DAP is a component of a political coalition known as Pakatan Harapan ('PH'). The first respondent is the Vice President of the Malaysian Chinese Association ('MCA'). MCA is a component in a political coalition known as Barisan National ('BN') and was a known political adversary of DAP. The second respondent is in the business of media publication, better known as 'The Star', with an online version known as 'The Star Online'. The instant suit is a defamation action brought by the appellant against the respondents.

[7] The dispute herein emanates from the change of name of Sekolah Jenis Kebangsaan Cina ('SJKC') Kuek Ho Yao ('the school').

The public controversy over the name of the school

[8] In March 2018, prior to the 14th General Election which took place in May 2018, there was a ground-breaking ceremony for the construction of the school on its site. The school was to be constructed by a developer called UM Land. At that time, the name of the school was SJKC Kuek Ho Yao, without any addition to that name. The school was named after a respected Chinese community leader in Johor, the late Tan Sri Kuek Ho Yao.

[9] Under the PH Government (which came to power at the 14th General Election), Teo Nie Ching (PW1), was the Deputy Minister of Education in charge of the construction of the school. However, as at July 2018, when PW1 was appointed as Deputy Minister, there was no progress on the construction of the school. The office of the Deputy Minister of Education was unable to contact UM Land between September 2018 and 25 February 2019 to proceed with the construction of the school. Therefore, the Ministry of Education under PW1 considered a proposal from another developer, Eco World to construct the school on another site about two kilometres away from the original site.

[10] On 30 March 2019, *China Press* online news published an article titled: 'SJKC Kuek Ho Yao to Switch School Land, The Retention of School Name to be Decided by the Developer'. In this news article, it was reported that:

(a) PW1 as Deputy Minister and several individuals visited the school's site to listen to the briefing of the construction of the school;

(b) the school would be constructed on a different site namely, on a land held by a new developer who was going to construct the school;

(c) The new developer had announced that they were willing to pay for the construction of the school and therefore, the question of whether the name SJKC Kuek Ho Yao would be retained depended on the developer;

(d) PW1's political secretary had been interviewed by China Press and informed that:

  (i) the construction of the school was to be funded by a new developer but the amount was still under discussion;

  (ii) the school would be on a new site belonging to the new developer;

  (iii) at that stage, it was inconvenient to disclose the name of the developer;

  (iv) the Ministry of Education had agreed to the erection of the school on the new site and the developer was willing to provide for the

costs. But whether the original name of the school would remain was up to the developer; and

(v) the Board of Directors of the new developer would discuss the name of the school and the amount they were funding. 'All will be decided by the Developer and later announced by the Ministry of Education'.

[11] On 15 April 2019, Sin Chew Daily News published an article titled:'Teo Nie Ching: Eco World and Ministry of Education Pays 50% each'. In this news article, it was reported that:

(a) PW1 disclosed that Tebrau will have a new SJKC funded equally by Eco World and the Ministry of Education;

(b) the naming of the school (the new SJKC) needed further discussion;

(c) SJKC Cheah Fah situated in Iskandar Puteri would be fully funded by Sunway Group and the school's name will be retained; and

(d) PW1 hoped SJKC Pei Chai, SJKC Cheah Fah and 'the agreed new Tebrau's SJKC could be operational in 2021.

[12] The existence of these news reports is not in dispute. Notably, while there was news that the name of SJKC Cheah Fah would be retained, SJKC Kuek Ho Yao was referred to as 'the agreed new Tebrau's SJKC' in Sin Chew Daily News' article dated 15 April 2019. The name of the school was in limbo. During the trial, PW1 agreed that these news reports (*China Press* dated 3 March 2019 and *Sin Chew Daily News* dated 15 April 2019) created uncertainty amongst members of the public as to whether the name of the school would be retained, amended or changed. PW1 agreed that this was something that needed clarification.

[13] On 2 April 2019, *Sin Chew* online news published an article titled:'SJKC Kuek Ho Yao renamed? Wee Ka Siong: The Chinese Community in Johor Bahru is Embarrassed'. In this news article, it was reported that:

(a) the MCA President (Dato' Seri Wee Ka Siong) had expressed that SJKC Kuek Ho Yao had already been named. But it was now up to the developer to decide whether to rename the school; and

(b) the MCA President asked why the naming of the school was to be decided by the developer. And why the Ministry of Education had given the authority to rename the school to the developer.

[14] The above *Sin Chew* online news dated 2 April 2019 reflected the anxiety amongst members of the public over the uncertainty as to the eventual name of the school. On 28 April 2019, *Sin Chew* online news published an

article titled: 'Teo Nie Ching: Building SJKC Eco Flora instead of SJKC Kuek Ho Yao was not an attempt at making things difficult'. In this news article, it was reported that PW1 had reiterated that the Ministry of Education had chosen 'to cooperate with the developer Eco World to build SJKC Eco Flora (temporary name) instead of SJKC Kuek Ho Yao'. Again, the existence of the aforesaid *Sin Chew* online news dated 28 April 2019 is not disputed. This would have caused the public angst since the school was already being referred to by the name 'Eco Flora' without any reference to 'Kuek Ho Yao' at all.

The change of name of the school decided at the meeting in November 2019 and the subsequent request for disbursement of the RM4m

[15] PW1 gave evidence that there was a meeting held on 10 November 2019 chaired by PW1 attended by: (a) the representative of Eco World; (b) the representative of the school's administrative body; and (c) the daughter and heiress of the late Kuek Ho Yao. At this meeting, it was agreed that the name of the school in Bahasa Malaysia or in Roman spelling would be SJKC Kuek Ho Yao with the addition of '@ Eco Spring'. This change of name was then reflected in various internal documents of the Ministry of Education and in correspondences involving the Government. For instance, there was a letter dated 29 November 2019 from the office of the Deputy Minister of Education to the appellant as the Minister of Finance.

[16] It was only pursuant to the above letter dated 29 November 2019, which was after the change of name of the school that was agreed at the meeting on 10 November 2019, that PW1 (as the Deputy Minister of Education) requested from the appellant (as the Minister of Finance) to approve the 'sumbangan' of RM4m as the construction fund for the school. It must however be highlighted that the agreement and the approval of the change of name of the school from 'SJKC Kuek Ho Yao' to 'SJKC Kuek Ho Yao @ Eco Spring' by PW1 (as the Deputy Minister of Education) was not known to the public because there is no evidence of any media report on the same. Therefore, as far as the public was concerned there was still uncertainty whether the name of the school was going to be SJKC Kuek Ho Yao or some other name.

The public controversy over the name of the school during the campaigning period

[17] During the Johor State Election, BN candidates from MCA mostly contested against PH candidates from DAP. The campaign and the contest were heated. This was confirmed by PW1, who was DAP's Campaign Director during the Johor State Election. There had been a challenge on 25 February 2022 by the MCA President against PW1 on the issues of Chinese education and SJKC Kuek Ho Yao. This is referred to in appellant's media statement dated 8 March 2022. PW1 too confirmed that the issue with regard to the name of the school was supposed to be a subject matter of the debate.

[18] On 28 February 2022, the first respondent posted a Facebook post. In the Facebook post, the first respondent publicly criticised the appellant for claiming that while he was the Finance Minister, he had allocated RM4m to the school. The first respondent claimed that there was an issue as to whether this allocation was coupled with a request by PW1 that the name of the school should be changed. According to him, the initial attempt was to change the name of the school to the name of a developer. Subsequently, in the face of opposition by the school, by adding the name of the developer to the name of the school. first respondent also asked PW1 and appellant whether the allegations were true.

[19] On 28 February 2022, *Guang Ming Daily Online* and *Sin Chew Daily Online* published newspaper articles. These Chinese newspaper articles reported on the first respondent's Facebook post referred to above. All these allegations during the campaigning period relating to the school were regarded as serious allegations by DAP, because it was a matter that attracted a lot of interest among the Chinese community in Johor and the voters. It was a big controversy at that time.

[20] On 7 March 2022, the first respondent issued an article to the second respondent via an email labelled 'Press Statement'. The article was received by Puan Eshter Ng Sek Yee (D2W2), who was the second respondent's Chief Content Officer. D2W2 received the email from MCA's Publicity Bureau on behalf of the first respondent. On the same day, ie 7 March 2022, the second respondent published the article as it is in the letter to the editor section of *The Star Online*. The first respondent's name and his position as the Vice-President of MCA were conspicuously stated at the bottom of the article.

[21] The entire article reads:

> *Guan Eng's bullying of TAR UC a contributory factor to Pakatan's demise*
>
> LIM Guan Eng must be taken to task for not owning up to his interference in funding for Tunku Abdul Rahman University College (TAR UC) when he was finance minister.
>
> Instead, the Bagan MP finds it more apt to mislead. These are among the contributory factors leading to the downfall of the Pakatan Harapan government.
>
> During the 22 months in which Pakatan held office, not only did it fail to accomplish anything concrete in terms of policy and economic development, it also destroyed existing goodwill earned by the previous government.
>
> A classic example is the cancellation of the RM30mil annual matching grant for TAR UC. Due to Guan Eng's oppression against TAR UC, MCA immediately initiated a fundraising campaign.
>
> Malaysians from all ethnic groups gathered to assist this institution by expressing their dissatisfaction with the Pakatan government.

At the Tanjung Piai by-election, more than 15,000 voters made their disappointment known by selecting Barisan Nasional on the ballot slip which returned MCA's Datuk Seri Dr Wee Jeck Seng to Parliament.

After Tanjung Piai, Guan Eng randomly allocated funds to an unrepresentative alumni association whose members were alleged to have close ties with him as his so-called allocation to TAR UC.

However, even as professional accountants are able to distinguish between an official TAR UC alumni association and an unrepresentative one, Guan Eng remained in the dark — whose fault is it? Education is an issue that cannot be compromised or politicised.

In addition to dealing with TAR UC, Guan Eng also politicised a Chinese primary school. During the Johor State election, he dared to claim that he had allocated RM4mil to SJKC Kuek Ho Yao.

However, he still did not dare deny that the condition for allocating that sum was to change the name of the school. When will he come out to explain this matter?

DATUK TAN TEIK CHENG

MCA vice-president

('the article') (Emphasis added.)

[22] The words complained of by the appellant relate to the last two paragraphs of the article which is highlighted in bold above ('the impugned statements').

[23] On 8 March 2022, the appellant used a press statement against the respondents demanding a withdrawal and apology. Upon refusal of the respondents, the appellant instituted this action in the High Court.

IN THE HIGH COURT

[24] The appellant contended that the impugned statements were defamatory of the appellant.

[25] The impugned statements carried these defamatory connotations and imputations, viz:

(a) during the tenure of his ministerial position as the nation's Finance Minister, the appellant has imposed a condition precedent to the allocation of RM4m to the said school;

(b) the appellant has demanded the said school to change its name if it wishes to benefit from the allocated fund;

(c) the appellant, as the then Finance Minister, has acted in a high handed, oppressive and arbitrary manner in dealing with the school and the allocated fund;

(d) the appellant has used the authority of his public office as leverage to interfere with and disrupt the administration as well as management of the said school;

(e) the appellant insisted to have his own way in dealing with the school and the fund that was allocated to it;

(f) the appellant is bereft of integrity and honesty;

(g) the appellant is not a person of good character;

(h) the appellant has no courage to reveal to the public that he had imposed a condition 'on the school;

(i) the appellant has abused his power as Finance Minister of the nation;

(j) the appellant did not deserve to hold the honourable position of Finance Minister;

(k) the appellant brought disrepute to the public office he held;

(l) as Finance Minister, the appellant was devious and conniving;

(m) the appellant was crafty and has no qualms in deceiving the public;

(n) the appellant was a person without integrity and dignity;

(o) if positioned in a high-level public office, the appellant was capable of abusing his power and authority to obtain what he wants;

(p) the appellant has politicised the education system by demanding change in the name of the school in return for financial allocation from the Government;

(q) by demanding the change of name; the appellant has intended to eliminate the memory of a prominent leader of the Chinese community, Tan Sri Kuek Ho Yao, in whose honour the school was named; and

(r) the appellant had exercised his ministerial power to act in contrary to the interest of the Chinese community by demanding the said school to change its name as condition to the allocation of RM4m.

[26] The appellant pleaded and thereafter testified at the trial that the impugned statements were vicious lies, for the plain reason that he never did what he was alleged to have done ie using his ministerial powers to impose upon the school a condition for the allocation of RM4m.

[27] The appellant admits that during his tenure as Finance Minister, the Federal Government did allocate a sum of RM4m to the said school. But there was no condition precedent whatsoever imposed on the school, as alleged by the respondents through the impugned statements that were published. The

appellant never imposed any condition for the school to change its name. A

[28] The appellant contended that the impugned statements were highly defamatory of him, and were written and published with an intention to disparage him in his personal capacity in terms of his office, profession and calling. B

[29] In consequence thereof, the appellant was exposed to humiliation, odium, ridicule and public scandal. The impugned statements have injured the credibility, character and reputation of the appellant. C

[30] The appellant pleaded in the statement of claim and thereafter testified at the trial that the impugned statements have lowered his standing in the estimation of right-thinking members of the society. Even though he was no longer the nation's Finance Minister when the impugned statements were published, nevertheless those statements injured his character, reputation, credibility and social standing by projecting him in a negative light as a former Finance Minister. D

[31] The respondents denied that the impugned statements were defamatory of the appellant. The respondents contented that the impugned statements are incapable of bearing the meaning ascribed by the appellant in the statement of claim. E

[32] The respondents also raised the defence of justification, fair comment and defence of reportage. F

[33] After a full trial, the High Court dismissed the appellant's claim with costs on, among others, the following grounds: G

(a) the contents of the statements were not capable of bearing the defamatory meaning pleaded by the appellant and hence not defamatory of the appellant;

(b) the respondents had successfully proven its defence of fair comment, and the respondents were not actuated by malice in making and publishing the statements; H

(c) the defence of reportage raised by the second respondent was successfully established; and

(d) the first respondent has not successfully proven defence of justification. I

[34] Aggrieved by the decision of the High Court, the appellant appeals to this court.

A THE APPEAL

[35] The appellant raised seven grounds of appeal and various sub-grounds in its memorandum of appeal. However, in its written submission, those grounds were reduced into five principal points as follows:

B

FIRST PRINCIPAL POINT —

The learned Judge of the High Court committed fundamental misdirection and serious appealable error when His Lordship referred to and relied upon extraneous facts to determine whether the impugned statements were defamatory of the C Plaintiff or otherwise.

SECOND PRINCIPAL POINT —

The Plaintiff has established on balance of probabilities that the impugned statements were defamatory of him. Consequently, the learned Judge's finding that D the impugned statements were not defamatory is unsustainable.

THIRD PRINCIPAL POINT —

The Defendants have failed to establish the defence of Fair Comment, which they have raised in their respective pleadings. Consequently, the learned Judge of the E High Court fell in error to hold on to the contrary.

FOURTH PRINCIPAL POINT —

The defence of Fair Comment, even if proven, is negated by malice on the part of the Defendants. The learned Judge of the High Court fell in error in holding that the Defendants were not actuated by malice when they made and published the F impugned statements.

FIFTH PRINCIPAL POINT —

The Second Defendant has failed to establish the defence of Reportage. Consequently, the finding of the learned Judge of the High Court on this issue is G untenable.

OUR DECISION

Meaning of the impugned statement

H

[36] In determining whether the impugned statements are capable of bearing a defamatory meaning, the primary role of the court is to focus on how the ordinary reasonable reader would construe the words. Meaning was to be determined according to how it would be understood by the ordinary I reasonable reader. It was not fixed by technical, linguistically precise dictionary definitions, divorced from the context in which the statement was made: see *Stocker v Stocker* [2019] UKSC 17.

[37] On the very same issue, the Federal Court in the case of *Chong Chieng*

Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300; [2019] 1 MLRA 515; [2019] 1 CLJ 329 held that:

> The steps of the inquiry before the court in an action for defamation was succinctly explained by Gopal Sri Ram JCA (later FCJ) in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1998] 2 MLRA 287; [1999] 1 CLJ 461; [1999] 1 AMR 753 (CA):
>
> > It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see: *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction ...

[38] In determining the meaning of the impugned statements, we are of the view that this court must look into consideration of the following:

(a) the impugned statements must be read in whole;

(b) it is not open for the appellant to select words of the sentence; and

(c) the impugned statements must be read in the context of the entire publication.

[39] Our task is to determine whether the impugned statements are capable of bearing the defamatory meaning ascribed by the appellant.

[40] Having read the impugned statements and the publication as a whole, we find it reveals as follows:

(a) the appellant was a politician and a senior leader of DAP which was participating in the state election when the impugned statements was made;

(b) DAP was known to be the political adversary of MCA and a reasonable man would accept that politicising a Chinese primary school is what a politician such as the appellant may do under circumstances;

(c) the appellant admitted that he gave political speeches about DAP's contribution for Chinese primary schools;

(d) it is not disputed that the appellant in the run up to the state election stated that during his tenure as the Finance Minister, the appellant had allocated RM4m to the school. To us, these acts of politicising;

(e) there is nothing in the allegation of 'politicising' that had the tendency to expose the appellant to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the appellant in the estimation of right-thinking members of society;

(f) there is no allegation in the impugned statements that it was the appellant who had imposed the condition;

(g) the allegations in the week before the publication of first respondent's article was that, it was PW1 who had imposed the condition on the change of name of the school before the RM4m was allocated;

(h) what the impugned statements does is to allege that the appellant had not denied that there was such a condition imposed. The impugned statements does not allege that the appellant had imposed the condition;

(i) the impugned statements, when read as a whole, is merely a call for the appellant to explain the allegations which had arisen in the course of the Johor State Election and which he had not issued any denial;

(j) in any event, the final sentence in the first respondent's article takes away any sting in the impugned statements. A person who is making an unequivocal and definitive allegation would not ask for an explanation. A reasonable man reading the final sentence in the impugned statements would accept that the explanation might be forthcoming from the appellant on the issue and would therefore not have the tendency to pass any judgment on him yet;

(k) it is not defamatory to allege that a Finance Minister had imposed a condition to its allocation of fund. The imposition of conditions by public authorities to their approvals is commonplace; and

(l) the imposition of a condition for the school to change its name before any fund could be allocated for its construction is also not defamatory because a reasonable man would accept that the change of name could be for innocent reasons due to changed or changing circumstances. Even if the name of a proposed school is changed, the old name could still be used for another school to be built. Indeed, this was alluded to by PW1 as shown in her following evidence:

> So my line of thinking at that point of time is, if indeed Eco World agree to fund 100%, then we can consider to let them build a SJKC Eco World. But at the same time we find another location in JB area to build a SJKC Kuek Ho Yao because the demand for SJKC in JB is very high.

[41] To our mind, an ordinary reasonable reader who reads the impugned statements together as a whole with the entire publication would understand that the impugned statements by the first respondent was merely to seek clarification from the appellant to explain the allegation which had arisen in the

course of Johor State Election and which he did not deny rather than to demean credibility and reputation of the appellant as confirmed by the first respondent in WS D1W2 and as agreed by the learned judge in his grounds of judgement.

[42] We cannot see how the impugned statements when read in the context of the publication as a whole were capable of giving the impression that the appellant as the then Finance Minister, has acted in a high-handed, oppressive and arbitrary manner in dealing with the school and allocated fund and/or the appellant has used the authority of his public office as leverage to interfere with and disrupt the administration of the said school as alleged by appellant.

[43] The appellant complained that the learned judge disregarded the evidence of the first respondent and second respondent's key witness who both allegedly admitted that the impugned statements contained allegations which the appellant alleged of being defamatory of him.

[44] However, we find there is no necessity to call or rely on witnesses to prove the defamatory meaning of the words.

[45] We find support for our view by referring to Gatley on *Libel and Slander* (7th Ed) at p 47 when it stated as follows:

> In the case of words defamatory in their ordinary sense, the plaintiff has to prove no more than that they were published; he cannot call witnesses to prove what they understood by the words, nor will it avail the defendant to call any number of witnesses to say that they did not believe the imputation. *The only question is, might reasonable people understand it in* a *defamatory sense?* Conversely, even where the only people to whom words were published did not understand them in a defamatory sense, it is probably the law that the words would be held defamatory if reasonable men would have understood them in such a sense. For it is unnecessary to prove that anyone did understand that the words in a defamatory sense as long as it is proved that there are people who might so understand them. (Emphasis added.)

[46] In any event, we are of the view that the final sentence in the article takes away any sting in the impugned statements. A person who is making unequivocal allegation would not ask for explanation. A reasonable man reading the final sentence in the impugned statements would accept that an explanation might be forthcoming from the appellant on the issue and would therefore not have the tendency to past any judgment on him yet.

[47] Moreover, a reasonable man seeing that the article is placed in the letter to the editor section would accept that a reply might be forthcoming from the appellant on the issue to the same section and would therefore not have the tendency to pass any judgment on him yet.

[48] The Federal Court in the case of *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] 4 CLJ 155 had described what amounts to a defamatory matter as follows:

> [28] The law in respect of what amounts to defamatory matter is well settled. An imputation would be defamatory if its effect is to expose the plaintiff, in the eyes of the community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them ...
>
> [29] The defamatory nature of the imputation is to be judged by the ordinary and reasonable members of the community or an appreciable and reputable section of the community ... The ordinary reasonable person has been held to be one of the fair average intelligence ... who is not avid for scandal ... but who may engage in some degree of loose thinking ... and reading between the lines ... but who, at the same time, should not be unduly suspicious.
>
> [30] To ascertain the meaning of the statement or publication, the plaintiff can rely on the natural and ordinary meaning or the innuendo meaning. The consideration of the meaning of the offending words involves an objective test ... The offending words must be considered in the context of the whole article and not simply on isolated passages ... In order to prove his claim in defamation, it is also essential that the offending words are not only defamatory and that they are published but also that they identify him as the person defamed.

[49] For the aforesaid reasons, it is our decision that the impugned statements are not capable of bearing the defamatory meaning ascribed by the appellant which was rightly accepted by the learned judge. Thus, we find there was no error of law or facts warranting our appellate intervention.

Fair comment

[50] The appellant complained that the learned judge had committed fundamental misdirection in holding that the respondents are entitled to rely on the defence of fair comment and that the impugned statements are not a comment but instead a libellous statement.

[51] The Federal Court in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758; [2022] 4 MLRA 718; [2022] 5 CLJ 487 ('the *Rafizi* case'), held that to establish the defence of fair comment the defendant will need to establish four elements as follows:

(a) the words complained of are comment, although they may consist or include inferences of fact;

(b) the comment is on a matter of public interest;

(c) the comment is based on facts; and

(d) the comment is one which a fair-minded person can honestly make on the facts proved.

[52] The meaning of 'fair' in the defence of fair comment has been explained by the Court of Appeal in the case of *Chok Foo Choo* when it held that 'fair' in the defence of fair comment does not mean 'not lopsided'. It means 'honest'.

The fair comment and the supporting facts in the present case

[53] The appellant alleged that the impugned statements were unsupported and untrue.

[54] Having perused the facts presented before this court, we are of the view that the impugned statements is based on the following true facts:

(a) the sentence in the impugned statements which states 'During the Johor state election, he dared to claim that he had allocated RM4m to SJKC Kuek Ho Yao' is true in substance based on the true fact that the appellant had, in the run-up to the state election, claimed that during his tenure as the Finance Minister, the appellant as the Finance Minister had approved the allocation RM4m to the school;

(b) the appellant had, in the run-up to the state election, raised the issue of Chinese primary schools in his political campaign, political speeches, statements and/or campaign; and

(c) the sentence in the impugned statements stating 'However, he still did not dare deny that the condition for allocating that sum was to change the name of the school' is true. The fact that the appellant had not issued any denial could be inferred from the true fact that the appellant had not made any public written statement on the public controversy that had arisen since the dissolution of the State Assembly including on the first respondent's Facebook posts and the reports on the same in the Chinese newspapers issued more than one week before the publication of the impugned statements.

[55] The following further true facts also emerged at trial which support the comments in the impugned statements:

(a) PW1, who was a senior leader of DAP and Deputy Minister of Education, had been involved in process of replacing the developer for the construction of the school since 25 February 2019 which then entailed the possibility of changing the name of the school;

(b) there were various newspaper reports involving PW1 or her officer since March 2019 reporting that the naming of the school would be left to the new developer;

(c) the name of the school was changed from SJKC Kuek Ho Yao to SJKC

Kuek Ho Yao @ Eco Spring as agreed at the meeting on 10 November 2019 attended by PW1;

(d) after the change of name was agreed, on 29 November 2019 PW1 requested from the appellant as Finance Minister for the disbursement of the RM4m; and

(e) the fact of the change of name was however not public knowledge as there is no evidence of any news report on the same.

[56] Considering the circumstances prevailing at the time the first respondent's article was published, the true facts above constitute sufficient substratum of facts for the comments in the impugned statements.

Fair

[57] We are of the view that comments made by the first respondent are one which a 'fair minded' person can honestly make.

[58] The *Rafizi* case makes reference to the case of *Sllkin v Beaverbrook Newspapers Ltd and another* [1958] 1 WLR 743 which states as follows:

> I will remind you of the test once more. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudicial view — could a fair-minded man have been capable of writing this?

[59] This court is of the view in considering this issue, it is pertinent to take into consideration the events that preceded the publication of the first respondent's article on 7 March 2022:

(a) on 3 March 2019: *China Press Online News* titled: 'SJKC Kuek Ho Yao to Switch School Land, The Retention of School Name to be Decided by the Developer';

(b) on 2 April 2019: *Sin Chew Online News* titled: 'SJKC Kuek Ho Yao renamed Wee Ka Siong: The Chinese Community in Johor Bahru is Embarrassed';

(c) on 15 April 2019: *Sin Chew Daily News* titled: 'Teo Nie Ching: Eco World and Ministry of Education Pays 50% Each';

(d) on 28 April 2019: *Sin Chew Online News* titled: 'Teo Nie Ching: Building SJKC Eco Flora Instead of SJKC Kuek Ho Yao was not an attempt at making things difficult';

(e) on 25 February 2022: The debate challenge by the President of MCA Dato' Seri Wee Ka Siong against PW1 on the issue of Chinese education and SJKC Kuek Ho Yao;

(f) on 28 February 2022: first respondent's Facebook post;

(g) on 28 February 2022: *Guang Ming Daily Online* and *Sin Chew Daily Online* newspaper articles reporting on first respondent's Facebook post;

(h) there was an absence of denial and/or explanation by the appellant and/or PW1; and

(i) on 7 March 2022: letter to the editor (TTC's article) was published on *The Star Online* (which contained the impugned statements).

[60] As PW1 herself agreed during trial there was uncertainty amongst members of the public as to whether the name of the school, SJKC Kuek Ho Yao, would be retained or changed, PW1 agreed that this was something that needed clarification.

[61] The campaigning period during the state election was therefore an opportune moment for this issue to be clarified. The second respondent played its part in making sure that the issue continued to be raised in view of the appellant's and/or DAP not explaining the issue directly.

[62] The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report on such matters.

[63] It springs from the general obligation of the press, media and other publishers to communicate important information upon matters of general public interest and the general right of the public to receive such information. The public acts of public men are certainly matters of public interest.

[64] The second respondent therefore, had an honest belief that the opinion and the issue in the impugned statements have to be disseminated for public information.

[65] Given the above, we are in the agreement with the learned High Court judge's finding that the impugned statements are an opinion and inference that a fair-minded person would have honestly made in the circumstances.

Public interest

[66] Upon perusal of the evidence produced before this court, we find that the public interest aspect in this case is evident.

[67] In *London Artists Ltd v Littler Grade Organisation Ltd v Same Associated Television Ltd v Same Grade v Same* [1969] 2 QB 375 at p 391, Lord Denning

MR rightly said that public interest is not to be confined within narrow limits. He continued:

> Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to then or others; *then it is a matter of public interest on which everyone is entitled to make fair comment.* (Emphasis added.)

[68] In this case, we find that there was a serious allegation because the issue of SJKC Kuek Ho Yao was a matter that attracted a lot of interest among the Chinese community and the voters in Johor that needs clarification. the impugned statements made reference to the state election and this issue was an obvious election issue.

[69] The parties at the opposite ends of the allegations were the appellant, PW1 and the first respondent. They were senior leaders of their political parties who participated and contested in the state election. Therefore, we view that the public possessed an added interest in being informed not only on the position with regard to the school but also the position and conduct of these leaders who are representatives of their political parties.

[70] We also find that prior to the publication of the first respondent's article, there was already extensive coverage by other media on the issue of the RM4m allocation to the school and the change in name of the school. Therefore, it is evident that the issues raised in the impugned statements were clearly matters of public interest.

Defence of reportage

[71] Second respondent also relies on the defence of reportage.

[72] The appellant complained that the second respondent did not plead the defence of reportage nor set out the material particulars in support of the defence of reportage in the pleadings.

[73] Upon perusal of the cause papers, we find that, it is pleaded in paras 43 to 47.3 of the amended defence. Even though the word 'reportage' was not specified but the gist of the defence ie material facts in relation to the defence of reportage was specifically pleaded.

[74] On this issue, the Federal Court in the case of *Mkini Dotcom*, held as follows:

> [38] It is thus clear that in that case the material facts were set out in the pleadings. In the context of the present case, what the appellant needed to do was to *set out all*

the material facts relating to the defence of reportage which they did not. Obviously, the appellants' reliance on *Re Vandervell's Trust* was to support their argument that only material facts need to be pleaded. The argument must fall because in this case the material facts relating to the defence of reportage were not pleaded at all.

[43] A close look at the appellants' statement of defence will reveal that other than the element of public interest, none of the other characteristics of reportage were pleaded, in particular the *element of neutrality and the element of not subscribing to a belief in the truth of the imputations. These are material facts which the appellants ought to have set out in the pleadings if they wanted to rely on reportage as a defence*. (Emphasis added.)

[75] It is to be noted that under the defence of reportage 'there is no need for the journalist to take steps to ensure the accuracy of the published information, which is a requirement of the Reynolds defence of responsible journalism': *Mkini Dotcom*.

[76] The second respondent is not relying on the defence of responsible journalism. The defence of reportage and responsible journalism are mutually exclusive. The two defences are separate and distinct. In *Mkini Dotcom*, the Federal Court decided as follows:

[27] Thus, having regard to the materia! differences in the defining characteristics of reportage and the *Reynold*s defence of responsible journalism and the different consequences that flow from their breaches, the two defences must be treated as mutually exclusive.

[77] The focus of the two defences is different. Unlike responsible journalism, the defence of reportage is not concerned with the truth and accuracy of the defamatory allegations but with the narrower public interest of knowing that the allegations were in fact made: *Mkini Dotcom*.

[78] Having read the article published by the second respondent including the impugned statements, we find that the second respondent published the first respondent's article (including the impugned statements) which is a matter of public interest to report the fact that the impugned statements had been made by the first respondent, in particular the call for the appellant to explain his non-denial that the condition imposed for the approval of the allocation of the RM4m to the school was for the school to change its name, without the second respondent adopting the impugned statements as its own. In doing so, the second respondent is protecting the public interest of knowing that the impugned statements had been made by the first respondent.

[79] We find that the second respondent published the impugned statements in a fair, disinterested and neutral manner as follows:

(a) the second respondent published the impugned statements in full

without embracing, garnishing, embellishing or reducing the same in substance;

(b) the second respondent published the impugned statements in the section of *The Star Online* for letters to the editor which means that it was open to the appellant to also send a letter in reply to the said section to be considered for publication; and

(c) the impugned statements itself ultimately called for the appellant to explain the appellant's non-denial that the condition imposed for the approval of the allocation of the RM4m to the school was for the school to change its name.

[80] More importantly, we find that the second respondent did not, by publishing the impugned statements, adopt the same as its own. The second respondent made this clear by stating the name of the first respondent and his position in MCA under the first respondent's article (which includes the impugned statements) and by publishing the first respondent's article as it was in the section in *The Star Online* for letters to the editor which is a section for the publication of materials produced by third-party members of the public and not by second respondent.

[81] With regard to the element of public interest, this had already been discussed earlier under the defence of fair comment. In the premises, we conclude that the second respondent is entitled to seek refuge under the defence of reportage. We are of the view that, it would be impossible for any news organisation to run the letter to the editor section if they are expected to verify the truth of every material they receive and intend to publish in that section.

[82] The appellant also contended that the learned judge failed to appreciate the governing principle on the defence of reportage whereby the defence can only be relied upon if there was an ongoing public dispute between the appellant and the first respondent.

[83] We find that this point was addressed by the learned judge in his grounds of judgment where he made an affirmative finding that there was indeed an ongoing public controversy over the name of the school.

> There was an ongoing public controversy over the name of the school
>
> [79] Plaintiff submitted that the defence of reportage can only be relied upon if the publication relates to an ongoing dispute and the published statements are attributed to their original maker. An ongoing dispute may generate a war of words between rival personalities or factions resulting in an exchange of allegations. Where under those circumstances, a journalist covering the dispute is at liberty to publish the allegations without having any trepidation of a potential lawsuit in defamation.

> The rationale behind the defence of reportage is that a journalist would have neither the time nor the resources to indulge in any process of verification as to the truth of the statements that are uttered by parties in an ongoing dispute. A journalist would have to endure competing press statements that are issued on hourly basis or within short period of time by the parties at dispute, to the extent that there is no means for him to confirm the veracity of each allegation.
>
> [80] I do not disagree with the above submission by plaintiff. Where we part ways however is with regards to plaintiff's contention that there was no ongoing dispute between first defendant and plaintiff prior to the publication of first respondent's Article (which contained the impugned statement). On the contrary, *it is evident that there was an ongoing public controversy surrounding the change of name of the school*. The controversy continued to shimmer and existed in the backdrop of intense campaigning during the State Election, where first defendant's political party (MCA) was pitted against plaintiff's political party (DAP). *Clearly, there was an ongoing dispute between first defendant and plaintiff*. (Emphasis added.)

[84] Based on the above, it is our view that it cannot be disputed that there was clearly an ongoing dispute between the appellant and the first respondent who were political adversaries. The second respondent evidently is entitled to the defence of reportage.

Repetition rule

[85] The appellant asserts that the learned trial judge erred in failing to hold that the repetition rule applied against the second respondent. The repetition rule is concerned with justification, not reportage which is a defence of privilege. The repetition rule has no application where privilege is invoked.

[86] The Federal Court in the case of *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413; [2017] 5 MLRA 361; [2017] 5 AMR 629; [2017] 8 CLJ 369 states as follows:

> [36] ... It is trite that a person who repeats another's defamatory statement without privilege may be held liable for republishing the same libel or slander.

[87] Thus, the phrase 'without privilege' in the above passage provides an exception to the repetition rule.

[88] Accordingly, we are of the considered view that the repetition rule is concerned with justification, not reportage. Once reportage is established, privilege is invoked and the repetition rule has no application where privilege is concerned. Therefore, the repetition rule does not apply to the second respondent who relies on the defence of reportage and fair comment.

Malice

[89] The appellant claims that the respondents cannot avail themselves to the defence of fair comment as such defence is negated by the existence of malice.

[90] It is to be noted that it is not established law that malice is relevant to the defence of reportage. As the Federal Court observed in *Mkini Dotcom*:

> [198] ... In any case, it is doubtful whether a sinister motive or malice is relevant in the case of the defence of reportage (see *Loutchansky v Times Newspapers Ltd and others (Nos 4 and 5); Loutchansky v Times Newspapers Ltd (Nos 2, 3 and 5)* [2002] QB 783 at [34]).

[91] For malice in reference to fair comment, it is not malicious for the second respondent to publish the first respondent's article of opinion even if the second respondent may not agree with the view stated therein. Gatley on *Libel and Slander* (9th Ed), para 16.24 states as follows:

> It is clearly established that where a comment originated by A is published by B, then the defence of fair comment is available to B even though the comment does not represent B's opinion: *it is not malicious in a newspaper editor to publish a comment with which he does not agree*.
>
> It is submitted that the better view is that in such a case B may take advantage of the defence of fair comment (unless he is aware of A's malice or is vicariously liable for A) for two reasons. First, because otherwise the news media would be placed in an intolerable position in publishing letters and opinions on matters of public concern. Secondly, the contrary view seems inconsistent with the modern view of fair comment as a 'two stage' issue in which the defendant establishes the defence by showing that the words are capable, considered objectively, of being fair comment and loses its protection only if he is actuated by malice. (Emphasis added.)

[92] In the present case, we find that the appellant's indication of the second respondent's malice can be summarised as follows:

(a) during cross-examination, D2W2 gave evidence that more likely than not she received the document via an email from the first respondent labelled 'press statement'. This change in narrative and departure from the second respondent's pleadings demonstrate lack of honesty and therefore constitute malice of publication ('first point');

(b) D2W2 was reckless as she published the article deceptively projecting it as a letter and not a press statement ('second point'); and

(c) the second respondent should have known the impugned statements could be untrue due to it being tainted by political flavour, as the appellant and first respondent belong to political parties that are fiercely opposed to each other ('third point').

[93] We find that these point were addressed by the learned judge in his

grounds of judgment when the judge make the following findings:

> 95. Moving on now to deal with the points raised by P above. Concerning the first point, the so called 'shift in narration' and alleged 'departure in pleadings', if at all material, took place well after the cause of action arose. P cannot draw on this point to establish malice for the publication of the article which took place a year earlier. Put another way, the question of whether there was malice should be looked at the point of publication.
>
> 96. Concerning the second point, as discussed earlier, the effect of the publication remains the same regardless if it was titled press statement or letter to the editor. There is no deception here as alleged by P. So long as the readers were made aware that the article was an opinion of the D1, they could not have possibly been misled by the D2,
>
> 97. Concerning the third point, P and the D1 may be political adversaries. However, this in no way should infer malice from either party, much less from D2. In *Government of State of Sarawak v Dato' Sri Wong Soon Koh* [2022] 8 MLJ 697 at pp 718–719, the High Court said:
>
> > [59] ... There were no derogatory, foul or demeaning words used against the plaintiff. Facts were stated and questions asked based on the facts. There is no doubt that the words may have been slanted with the intention of putting the plaintiff in a certain bad light but this is expected, even by the ordinary reasonable man, as between politicians on different sides of the political divide and well within the limits of the constitutional right to freedom of speech.
> >
> > [60] ... Hint of political rivalry clearly yes but certainly not malice. One can safely say that the general public perception of the reputation of politicians in Malaysia as a whole is such that the threshold to defame a politician, especially by another politician is, in the eyes of the reasonable man, high.
> >
> > [62] I find that the impugned words are not only what an ordinary man would hear from politicians, but would expect to hear from a member (in this case the leader) of the opposition. I find no malice in the impugned words on the part of the defendant.
>
> 98. In other words, the desire to injure must be the dominant motive. Mere dislike of P does not constitute malice as long as the defendant spoke honestly. Even if malice is proven against D1 in this regard, it is illogical to find D2 malicious simply on the basis that P and D1 are political adversaries.

[94] Given the above, we see no reason to depart from the findings of the learned judge. Further, we are of the view that the appellant and the first respondent may be political adversaries, however, this in no way should infer malice from either party, much less from the second respondent.

[95] This court is of the view that mere dislike or indignation of appellant does not constitute malice as long as the respondents spoke honestly. Even assuming if malice is proven against the first respondent in this regard, it is

extremely illogical to find the second respondent malicious simply on the basis that the appellant and the first respondent are political adversaries.

[96] As for the first respondent, we find that his defence of fair comment is not defeated by malice. This is not a case where the first respondent made the impugned statements while knowing it to be false, or without any belief that it is true, or was reckless in making the impugned statements. The first respondent testified that he had made enquiries with a member of the Building Committee of the school before making the impugned statements. We are satisfied that the first respondent had an honest belief in the impugned statements.

DAMAGES

[97] The appellant has requested a sum of RM5m in compensatory damages against both the respondents for general, aggravated and exemplary damages.

[98] On this issue of damages, we find that the learned judge has dealt with the issue in paras 107–115 of his grounds of judgment.

[99] Having regard to the authorities and applying the factors set out by the Federal Court in *Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor* [2017] 6 MLJ 133; [2017] 6 MLRA 281; [2018] 1 CLJ 145; [2017] 7 AMR 317, the learned judge in paras 107–115 of his grounds of judgment is of the view that damages (if any) against both the respondents should not exceed RM150,000 for the following reasons:

(a) the allegations are not grave based on, among others the following reasons:

(i) similar allegations had been made in D1's Facebook posts and in the Chinese newspapers without any action by P. This would appear to suggest that P himself did not see the allegations are being grave. Otherwise, P would have taken action against all;

(ii) no interim injunction had been applied for in this case to immediately stop the publication of the impugned statement. It if was serious, P would have applied to stop and remove the publication of the impugned statement pending trial;

(iii) P filed the instant suit only two months after the publication of the impugned statement;

(iv) there is a query at the end of the article asking P to provide an explanation. So, in any event the impugned statement does not amount to any unqualified and unequivocal allegations;

(v) there is no direct allegation that it was P who had imposed the

condition on the change of name of the school; and

(vi) there had been no denial by P to similar allegations made about a week earlier in D1 Facebook posts and in the Chinese newspapers.

(b) the size of circulation is small and its influence is limited based on, among others, the following reasons:

(i) the impugned statement was published only in *The Star Online* behind a paywall where the impugned statement could only be seen after going behind the paywall tucked away in the final two paragraphs of the article on TAR UC; and

(ii) D2 has led evidence that the impugned statement had been seen using only 3,460 unique devices online. Although P rejects this evidence, P has not led any evidence that anybody has accessed the impugned statement by unlocking the paywall

(c) the publication does not appear to have had an adverse effect on P as seen from the fact that P continued to win a Parliamentary seat at the November 2022 General Election and was elected to the position of Chairman of DAP on 20.3.2022, which was a mere 13 days after the publication of the impugned statement;

(d) on the extent and nature of P's reputation, it is that of a senior federal level politician. It was never suggested or portrayed during the trial that P is a person of poor character. There was no character assassination;

(e) on the other hand, P's behaviour should reduce any damages that he might be entitled to. Firstly, he has not pursued any legal action on similar earlier allegations in D1's Facebook post and in the Chinese newspapers. Secondly, he had not denied these earlier allegations despite sufficient time to do so.

(f) thirdly, by not denying, it could be said that he was encouraging uncertainty in the community as to the truth behind the issue; and

(g) in the case of D2, D2 did not plead justification. Further, the behaviour of D2 should be a mitigating factor in the assessment of damages. D2 made it clear that it was only providing D1 with a platform to raise an issue which was a matter of public interest to have the voters during an election. Further, D2 made it clear that the impugned statement was not its own views but the views of D1. Finally, D2 published the article (including the impugned statement) in the letter to the editor section. This means that it was open to P to issue a counter statement which could be published in the section, if he had availed himself of that opportunity.

[100] Based on the aforesaid reasons, we agree with the learned judge that the damages (if any) against with the respondents should not exceed RM150,000.

A CONCLUSION

[101] Having heard the appeal, examined the appeal records and considered the submissions by parties, we find that there is no merit in the appeal. We unanimously decided to affirm the decision of the High Court and therefore B dismiss the appeal with costs of RM30,000 to the first respondent and RM40,000 to the second respondent, both subject to allocator.

Appeal dismissed and High Court's decision affirmed.

C Reported by Ashok Kumar

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